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March 30, 2005

Via Electronic Filing
Clerk of the Court
U.S. District Court
for the District of Massachusetts
U.S. Courthouse
One Courthouse Way
Boston, MA 02110

Re: Oyster Harbors Marine Business Trust, as successor in interest to,
Oyster Harbors Marine, Inc. and
Hanover Insurance Company, as subrogee of Richard P. McCoy, and
Glens Falls Insurance Company, as subrogee of, Alfred & Helen Callahan, III
v. Crosby Yacht Yard

C.A. No. 04-12244-GAO

Dear Sir/Madam:

Enclosed, for docketing and filing, please find the following documents with respect to the above-captioned matter:

1. Renewed Motion for Consolidation of Actions;
2. Motion for Consolidation of Actions;
3. Memorandum In Support of Assented to Motion for Consolidation of Actions; and
4. Affidavit In Support of Assented to Motion for Consolidation of Actions.

Clerk of Court
March 30, 2005
Page 2

Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Heather E. Davies".

Heather E. Davies

HED/

Enclosures

Cc: Deborah A. Crinigan, Esq.
David J. Daly, Esq.
Robert E. Kiely, Esq.
John H. Bruno, Esq.
Seth S. Holbrook, Esq.

**UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS**

| | | |
|-------------------------------------|---|------------------|
| OYSTER HARBORS MARINE BUSINESS | : | |
| TRUST, as successor in interest to, | : | |
| OYSTER HARBORS MARINE, INC. | : | |
| and | : | |
| HANOVER INSURANCE COMPANY, | : | |
| as subrogee of, RICHARD P. MCCOY, | : | |
| and | : | |
| GLENS FALLS INSURANCE COMPANY, | : | CIVIL ACTION NO. |
| as subrogee of, ALFRED & HELEN | : | |
| CALLAHAN, III | : | 05 10203 WHY |
| Plaintiffs, | : | |
| | : | |
| v. | : | |
| | : | |
| CROSBY YACHT YARD, INC. | : | |
| | : | |
| Defendant. | : | |

RENEWED MOTION FOR CONSOLIDATION OF ACTIONS
(Filed in C.A. No. 04-12244-GAO and C.A. 04-12252-WHY)

Now come the plaintiffs in the above-entitled action, and each of them, by their attorneys, renew their Motion for Consolidation of actions with Civil Action No. 04-12244-GAO and Civil Action No. 04-12252-WHY, pursuant to the March 15, 2005 Order of the Court in Civil Action No. 05-10203-WHY. The following documents requesting consolidation, filed in the above-captioned matters, are attached herewith in renewal of the plaintiffs' motion:

1. Motion for Consolidation of Actions;
2. Affidavit in Support of Motion for Consolidation of Actions; and
3. Memorandum in Support of Motion for Consolidation of Actions.

Wherefore, the plaintiffs pray that the above-captioned action be consolidated before Judge O'Toole with Civil Action No. 04-12244-GAO, *Standard Fire Insurance Company v. Crosby Yacht Yard, Inc. and Oyster Harbors Marine, Inc.* and with Civil

Action No. 04-12252-WHY, *Ace American Insurance Company, Federal Insurance Company, Insurance Company of North America, Maryland Casualty Company and Northern Insurance Company v. Crosby Yacht Yard, Inc. and Oyster Harbors Marine, Inc.*

**MCDONOUGH, HACKING &
LAVOIE, LLP**

By: Heather E. Davies

Heather E. Davies, Esquire
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Attorneys for Plaintiffs,
Oyster Harbor Marine
Business Trust, Hanover
Insurance Company, and
Glens Falls Insurance
Company

Dated: 3/30/05

OF COUNSEL:

WHITE AND WILLIAMS LLP

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Attorneys for Plaintiffs, Oyster Harbor Marine
Business Trust, and Hanover Insurance
Company

WHITE AND WILLIAMS LLP

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1800 One Liberty Place
Philadelphia, PA 19103
Telephone (215) 864-6344
Fax (215) 864-7123

Attorneys for Plaintiff, Glens Falls Insurance
Company

CERTIFICATE OF SERVICE

I hereby certify that on March 30, 2005, I electronically filed Plaintiffs' Renewed Motion for Consolidation of Actions with the three attached documents referred to therein with the Clerk of the Court in CV No. 04-12244-GAO with the CM/ECF system, and mailed copies of said documents via U.S. First Class Mail to the following parties:

1. John H. Bruno, II, Esq.
2. Seth H. Holbrook, Esq.
3. Robert E. Kiely, Esq.



Heather E. Davies, Esquire, BBO#651739
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Defendant.

05 10203 WHY

2. The factual distinctions between these cases are very limited and in no way conflict as to make separate trial necessary;

3. That the pretrial procedure and motions, if any, will be virtually identical in each case, and there are common questions of law and fact;
4. That in the interest of judicial economy and the avoidance of costs and delay these causes should be consolidated;
5. That all plaintiffs to the three cases have assented to consolidation.
6. The motion should be permitted for the reasons set forth in the attached memorandum.

WHEREFORE, the plaintiffs in all three actions and counsel for defendant, Oyster Harbors Marine, Inc. request that this case be consolidated before Judge O'Toole with Civil Action No. 04CV12244 Standard Fire Insurance Company v. Crosby Yacht Yards, Inc., et al. and Civil Action No. 04CV12252 ACE American Insurance Company, et al. v. Crosby Yacht Yard, Inc., et al.

ACE American Insurance Company, Federal Insurance Company, Insurance Company of North America, Maryland Casualty Company and Northern Insurance Company
By their attorney.

David J. Daly (HED)
David J. Daly, Esquire
Daly Cavanaugh LLP
27 Mica Lane
Wellesley, MA 02481
(781) 237-0600

Standard Fire Insurance Company, Inc.
By its attorney.

Robert E. Kiely (HED)
Robert E. Kiely, Esquire
Regan & Kiely LLP
85 Devonshire Street
Boston, MA 02109
(617) 723-0901

Oyster Harbors Marine, Inc.
By its attorney.

John H. Bruno (HED)
John H. Bruno, II, Esquire
Masi & Bruno
125 Long Pond Road, Unit 11
Plymouth, MA 02360
(508) 747-5277

Oyster Harbor Marine Business Trust, Hanover
Insurance Company, and Glens Falls Insurance
Company

By their attorney.

A handwritten signature in cursive script, appearing to read "Heather E. Davies", is written over a horizontal line.

Heather E. Davies, Esquire
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6 Beacon Street, Suite 815
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(617) 367-0808

**UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS**

| | | |
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| OYSTER HARBORS MARINE BUSINESS | : | |
| TRUST, as successor in interest to, | : | |
| OYSTER HARBORS MARINE, INC. | : | |
| and | : | |
| HANOVER INSURANCE COMPANY, | : | |
| as subrogee of, RICHARD P. MCCOY, | : | |
| and | : | |
| GLENS FALLS INSURANCE COMPANY, | : | CIVIL ACTION NO. |
| as subrogee of, ALFRED & HELEN | : | |
| CALLAHAN, III | : | 05 10203 WHY |
| Plaintiffs, | : | |
| | : | |
| v. | : | |
| | : | |
| CROSBY YACHT YARD, INC. | : | |
| | : | |
| Defendant. | : | |

**MEMORANDUM IN SUPPORT OF
ASSENTED TO MOTION FOR CONSOLIDATION OF ACTIONS**

The plaintiffs, Oyster Harbors Marine Business Trust, Hanover Insurance Company, and Glens Falls Insurance Company together with plaintiffs, ACE American Insurance Company, Federal Insurance Company, Insurance Company of North America, Maryland Casualty Company, Northern Insurance Company and Standard Fire Insurance Company, hereby submit the following memorandum in support of the motion that three pending cases (04CV12244, 04CV12252, and 05CV10203) be consolidated before Judge O'Toole for all purposes.

All three civil actions arise out of a fire that occurred on or about December 10, 2003 in Osterville, Massachusetts. All of the plaintiffs in Civil Action No. 04CV12244 and 04CV12252 are insurance companies that indemnified their insured boat owners for damages caused by the fire. Two of the plaintiffs in the above-captioned matter are insurance companies that similarly indemnified their insured boat owners for damages allegedly caused by the fire. The third plaintiff is Oyster Harbors Marine Business Trust, the marina adjacent to Crosby Yacht Yard,

who also sustained property damages caused by the fire's spread to its premises. Defendant, Crosby Yacht Yard, Inc. is a defendant in all three cases. Oyster Harbors Marine Business Trust is a plaintiff in this case and a defendant in Civil Action No. 04CV12244 and Civil Action No. 04CV12252. Essentially, the issues of law and fact in all three cases are identical.

Federal Rule of Civil Procedure 42(a) provides that the Court may consolidate pending cases involving a common issue of law or fact.¹ Rule 42(a) was designed to encourage consolidation wherever possible, in the interest of judicial economy. See United States v. Knauer, 149 F.2d 519, 520 (7th Cir. 1945); Viccaro v. Moore-McCormick Lines, Inc., 64 F.R.D. 395, 397 (SDNY 1974). When considering the consolidation of cases, courts exercise a broad discretion. Knauer, supra at 520. All plaintiffs submit that the consolidation of the three pending cases will promote the interest of judicial economy and will also avoid the possibility of inconsistent rulings or findings.

¹ Fed. R.Civ.P. 42(a) provides that "[w]hen actions involving a common question of law or fact are pending before the Court, it may order a joint hearing or trial of any or all of the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay."

WHEREFORE, the parties ask that the Motion to Consolidate for all purposes be granted by the Court.

Respectfully submitted,

ACE American Insurance Company, Federal Insurance Company, Insurance Company of North America, Maryland Casualty Company and Northern Insurance Company
By its attorney.

David J. Daly (HED)
David J. Daly, Esquire
Daly Cavanaugh LLP
27 Mica Lane
Wellesley, MA 02481
(781) 237-0600

Standard Fire Insurance Company, Inc.
By its attorney.

Robert E. Kiely (HED)
Robert E. Kiely, Esquire
Regan & Kiely LLP
85 Devonshire Street
Boston, MA 02109
(617) 723-0901

Oyster Harbor Marine Business Trust, Hanover Insurance Company, and Glens Falls Insurance Company
By their attorney.

Heather E. Davies
Heather E. Davies, Esquire
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6 Beacon Street, Suite 815
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Oyster Harbors Marine, Inc.
By its attorney.

John H. Bruno (HED)
John H. Bruno, II, Esquire
Masi & Bruno
125 Long Pond Road, Unit 11
Plymouth, MA 02360
(508) 747-5277

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS

OYSTER HARBORS MARINE BUSINESS
TRUST, as successor in interest to,
OYSTER HARBORS MARINE, INC.
and
HANOVER INSURANCE COMPANY,
as subrogee of, RICHARD P. MCCOY,
and
GLENS FALLS INSURANCE COMPANY,
as subrogee of, ALFRED & HELEN
CALLAHAN, III
Plaintiffs,
v.
CROSBY YACHT YARD, INC.
Defendant.

**AFFIDAVIT IN SUPPORT OF ASSENTED-TO MOTION
FOR CONSOLIDATION OF ACTIONS**

Heather E. Davies, Esquire, being duly sworn, deposes and says:

1. I represent the plaintiffs in the above-entitled case.
2. Said action was brought on the 1st of February, 2005.
3. On the 25th of October, 2004, C.A. No. 04CV1224 was filed by plaintiff, Standard Fire Ins. Co. and C.A. No. 04CV12252 was filed by plaintiff, Ace American Ins. Co. against the same defendant and against Oyster Harbors Marine, Inc.
4. Each of the above-entitled actions is now pending in this Court.
5. Each of the said actions arose out of the same fire that is alleged to have occurred on defendant, Crosby Yacht Yard's premises.
6. The issues in all 3 of these actions arose out of the same transactions and/or are based upon the same facts, in that all of the plaintiffs are insurers seeking recovery of moneys paid to their insureds, allegedly as the result of the fire, which fire is alleged to have occurred on the premises of the defendant, Crosby Yacht Yard, and to have been caused by, *inter alia*, the negligence of the defendant.

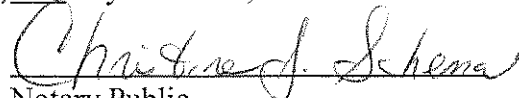
7. Plaintiff, Oyster Harbor Marine Business Trust claim for property damages against Crosby Yacht Yard arises out of the fire
8. Each of said actions involves a common question of law and/or facts.
9. Considerable time and expense will be saved by the consolidation of the three actions.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY
THIS 10th DAY OF MARCH, 2005



Heather E. Davies, Esquire
McDonough, Hacking & Lavoie, LLP
6 Beacon Street, Suite 815
Boston, MA 02108
(617) 367-0808

Commonwealth of Massachusetts
County of Suffolk
Subscribed and sworn to before me this
10 day of March, 2005.


Notary Public

My Commission expires:
7/28/2006